CHAPTER 3

The Judicial System in the Autonomous Districts of Meghalaya : General Observations and the Sources of Law

The preservation of autonomy

Perhaps the most interesting feature of the legal system as applicable to the tribal areas in Meghalaya is the fasciculus of provisions pertaining to the judicial system. These provisions, differing substantially from those applicable to non-tribal areas, exhibit a marked desire to maintain the autonomy and ethnic identity of the inhabitants of the tribal areas. They also pay high regard to the need for preserving some of the indigenous institutions—as is indeed manifest from the very expression "autonomous district" that is used to denote the constitutional and legal status of the areas in question. The extent to which these institutions have been preserved, and the manner in which they function, is an absorbing matter for study.

Ever since empirical field research became a tradition in social anthropology, its practitioners have stressed the need for studying and putting on record cultures and forms of social life faced with the prospect of rapid transformation in modern times.[1]

The problems of the researcher

The area for research is vast and one with considerable sociological interest. A few words about methodology are therefore in order. Research in social fields usually implies (i) data collection, (ii) compilation and analysis of material, and (iii) theory building. Generally, the first item—data collection—is not a difficult task. The second item, namely,

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1. A. C. Bhagavati, "Anthropological research in the Assam region" in Abbi and Saberwal (ed.), *Urgent researches in Anthropology* 54 (1969).

the compilation and analysis of material, is much more laborious than the former.[2] As to the third item, *viz*, theory building, its soundness naturally depends largely on the quality and quantity of research carried out under the first two items, together with the quality of the intellectual equipment of the researcher. If the data is not adequate, the validity of the conclusion will suffer. If the researcher is not intellectually well equipped, then also the results may be poor.

These considerations apply to all social research, including socio-legal research. However, when one sets before oneself the task of studying the judicial institutions of the tribal areas in question, certain peculiar difficulties present themselves. Even the collection of data takes time and becomes, occasionally, an enervating task. In part, this is due to the scantiness of up-to-date material on the subject. Although numerous studies have been made of the life, customs and manners of tribal people, equal attention does not appear to have been paid to their judicial institutions, at least in the Indian context. Fascination with material of unusual ethnic interest has overshadowed other aspects of the matter. Such material as is available on the subject is either out of date or sketchy, or written from an angle or in a style that does not combine the precision of legal research with lucidity of style. In any case, the material is scattered at various places and not very easy to locate. The primary source materials—the constitutional and statutory rules and orders issued from time to time regulating the legal system and judicial institutions of the areas in question—are themselves in a state that is not very attractive at the first sight. As far as could be seen, no attempt has been made after 1953 to tidy them up, or to codify them in one single statutory Instrument where all the rules on the subject can be located. Further, though the Rules issued in 1953 are, in their content, more comprehensive than earlier statutory Instruments, their draftsmanship at many places leaves considerable scope for improvement in point of style. They do not exhibit that precision, neatness and vigour which one has come to associate with Instruments issued under the Constitution of India or under major Central Acts.

Thus, the very first item of social research enumerated above—data collection—presents, in this case, some peculiar difficulties. The second item, namely, compilation and analysis of data is, of course, always a laborious task, as already stated. Theory-building (the third item) is an exciting part of the job of the researcher, and to a large extent compensates for the labour and difficulties of research.

The hierarchy of courts

The hierarchy of courts in Assam, Manipur and Tripura is more or

2. Peter M. Gardner, "Urgency for a synthesis of Indian cultural material" *supra* note I at 83.

less similar to the other states of the country, but Nagaland, Meghalaya and Mizoram have their District Council Courts and Subordinate District Council Courts and (at the bottom) the village authorities. In these areas the local head of the administration of justice in criminal matters is the Deputy Commissioner, who exercises these powers with the help of Assistants to the Deputy Commissioner. The Deputy Commissioner and the Additional Deputy Commissioner exercise the power of the Sessions Court within the meaning of the Code of Criminal Procedure. Only the spirit of the Criminal Procedure Code and the Civil Procedure Code applies.[3]

Constitutional history

In order to understand the judicial system, particularly the structure and organisation of courts and their powers in the Khasi and Jaintia Hills and in the Garo Hills, one must bear in mind a few salient features of the constitutional and legal history relevant to the tribal areas of the North Eastern areas of India.

The areas now known as tribal areas were, during the British rule, governed separately from the other areas included in the corresponding Province. It is enough to mention that the Scheduled Districts Act, 1874, made special provisions for their administration. When the Government of India Act, 1935 came into force, these areas were subject matter of special provisions and that Act adopted the terminology of "Excluded and Partially Excluded Areas".

Autonomous status

When the Constitution of India came into force, the Khasi-Jaintia District and the Garo District were included in the "Tribal Areas" mentioned in the Sixth Schedule to the Constitution (along with other tribal areas of the erstwhile State of Assam). By virtue of the provisions enacted in (or under) the Sixth Schedule to the Constitution, a large measure of local autonomy was conceded to the District Councils in the tribal areas. On the commencement of the Constitution, the Khasi and Jaintia Hills and the Garo Hills were constituted into separate "autonomous districts" of the State of Assam. Later, the State of Meghalaya was formed, but this development has not affected their status (in substance) as autonomous districts.

The Scheduled Districts Act, 1874, the Government of India Act, 1935 and the Constitution of India, all have provided for special legislative or administrative measures for the areas in question. This very bare state-

3. Justice Baharul Islam, "Law and Justice in the Eastern Region", in Gauhati High *Court Commemoration Volume (1948-1973)*, 22-25.

ment of the constitutional history[4] is intended primarily to facilitate a proper understanding of the special measures (partly Acts, but mostly statutory Instruments) that have come to be enacted or promulgated from time to time to deal with judicial administration in these areas.

The history of judicial administration

As regards the history of judicial institutions in the tribal areas of Meghalaya, it can be conveniently considered (in brief) with reference to four periods—

(*i*) the period upto 1874,
(*ii*) the period 1874-1937,
(*iii*) the period 1937-1953 and
(*iv*) the period from 1953 to date.

(*i*) With reference to the first period, it is enough to state that Assam came under British rule round about 1823. Up to 1874, the judicial power in the tribal areas was exercised by British officers by virtue of treaties and agreements with native chiefs and princes which had been given the sanction of law (*i.e.* in municipal law), either by orders issued under the Foreign Jurisdiction Act (this was primarily the position regarding Khasi Hills States), or by orders issued by the administrative head of the areas concerned as agent of the Governor-General. There were certain points of difference between Khasi States (on the one hand) and other areas of Khasi Hills. However, since this difference has now disappeared, details of the dichotomy need not be elaborated for the present purpose.[5]

(*ii*) During the period 1874-1937, the tribal areas in Assam were mostly governed (so far as law and justice are concerned) by Rules made by the Governor under section 6 of the Scheduled Districts Act (14 of 1874). In 1937, the Governor of Assam issued Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills District,[6] cancelling all provisions on the subject. Though these Rules, of their own force, did not apply to "Khasi States", substantial portions thereof were extended to those states by the Crown Representative, acting under the Indian (Foreign Jurisdiction) Order in Council[7] issued under the Foreign Jurisdiction Act. (Separate orders were issued for the Shillong area, but we are not concerned with that area in this study). Incidentally,

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4. For detailed constitutional history, see Hidayatullah, *Fifth and Sixth Schedules to the Constitution of India* (1979) and H. S. Saxena, *Safeguards for Scheduled Castes and Scheduled Tribes* 88 *et. seq* (1980).
5. For a detailed consideration of the status of Khasi Hills States, see *U Owing* v. *Ka Nosibon*, A. I. R. 1956 Assam 129.
6. Governor of Assam, Notification No. 2618 AP dated 29. 3. 1937.
7. Notification No. 164-IB dated 18. 8. 1937.

the Rules *per se* did not confer any judicial power on any village chief unless the Deputy Commissioner conferred the power on him and recognised it by the grant of a "Sanad".[8]

The Rules issued in 1937 thus more or less codified the position as to the legal and judicial system until the Rules of 1953 superseded them. The precise extent of supersession is a matter of some obscurity and will be dealt with in due course.

(iii) The period, 1937-1953, was a period of rapid and successive constitutional developments. This period embraces many developments, such as the commencement of the Government of India Act, 1935, the passing of the Indian Independence Act, 1947, the formation of the Dominion of India thereunder, the accession of Khasi States to that Dominion and, finally, the commencement of the Constitution of India. These constitutional developments were accompanied or followed by connected legal developments relevant to tribal areas. Leaving aside developments confined to transitional periods (such as the period during which India was a Dominion and during which the Khasi States acceded to the Dominion of India), one can state that the Constitution of India, by the Sixth Schedule, not merely brought in one fold all the areas now comprised in tribal areas (particularly, the Khasi States as also the Assam tribal areas), but also gave a constitutional status to the autonomy of these areas by making the elaborate provisions contained in the Schedule.

Paragraph 4 of the Sixth Schedule to the Constitution lays down rules for the administration of justice in autonomous districts and autonomous regions. It empowers the District or Regional Councils to constitute Village Councils or Courts for the trial of suits and cases between parties all of whom belong to scheduled tribes within such areas, subject to certain exceptions. This paragraph also authorises the District or Regional Councils to appoint suitable persons to be members of such Village Councils or presiding officers of such courts. The District Council is to exercise powers of a court of appeal in respect of all suits and cases triable by a Village Council or Court constituted in the area under the above provision and no other court except the High Court or the Supreme Court has jurisdiction over such suits or cases. The District Council is also authorised to make rules regarding the constitution of Village Councils and Courts and the powers to be exercised by them, the procedure to be followed by the Village Councils or Courts in the trial of suits and cases (both in the original and in the appellate stage) and for the enforcement of decisions and orders of such courts and other ancillary matters. There are also provisions in the Sixth Schedule restricting the application of State Acts to autonomous districts or regions on certain matters and also empowering the Governor to exclude the application of State Acts or Acts of Parliament to those areas. These somewhat

8. See the discussion in *U Owing* v. *Ka Nosibon*, A. I. R. 1956 Assam 129.

lengthy prefatory observations are necessary to understand the background against which the Rules were issued in 1953 for the administration of justice in the tribal areas (to be referred to presently). In a sense, these Rules carry out, in the field of legal system, what is envisaged in the constitutional structure applicable to tribal areas. The Rules were promulgated by the District Council with the Governor's approval under the provisions of the Sixth Schedule and constitute one of the major sources (though not the exclusive source material) for the present study.

In the Constitution of India, Article 244 (2) provides that the provisions of the Sixth Schedule shall apply to the administration of tribal areas in the State of Assam. The Sixth Schedule contains the provisions as to the administration of tribal areas in Assam. The Schedule divides the tribal areas into Part A and Part B. In Part A of the table appended to paragraph 20, it includes (1) the United Khasi-Jaintia Hills District, (2) the Garo Hills District, (3) the Lushai Hills District, (4) the Naga Hills District, (5) the North Cachar Hills and (6) the Mikir Hills.

In Part B of the Sixth Schedule, it includes (1) the North East Frontier Tract, including the Balipara Frontier Tract, Abor Hills District and Misimi Hills District and (2) the Naga Tribal Area.

Under paragraph 1 of the Sixth Schedule, subject to the provisions of that paragraph, the tribal area in each item of Part A shall be an autonomous district. The Governor may, by public notification, divide areas of different scheduled tribes into autonomous districts. The tribal area of each of the items of Part A is made an autonomous district. The autonomous districts are to have District Councils and the autonomous regions are to have Regional Councils. Under paragraph 2 the District and the Regional Councils are to make laws for the respective areas. The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of paragraph 3 apply as the Governor may, from time to time, by order, specify. The District Councils and the Regional Councils can make laws with respect to, among others, the appointment and succession of chiefs or headmen; the inheritance of property; marriage; and social customs. All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.[9]

So much as regards the constitutional and legal developments relevant to tribal areas. Coming to the legislative and statutory Instruments relevant to judicial administration, the year 1937 may be regarded as a landmark, inasmuch as it was in that year that (as already stated above) Rules for the administration of justice and police were promulgated for

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9 K N. Saikia, "Gauhati High Court Law Research Institute", in *supra* note 3 at 28-38.

both the tribal areas in question, under the Scheduled Districts Act.[10] These Rules have, in most respects, been superseded by Rules issued subsequently in 1953 (to be considered in due course) The precise extent to which the supersession has been operative is however a matter of obscurity, because of the somewhat indefinite character of the repeal clause[11] in the Rules of 1953.

One reason why the repeal clause in the Rules of 1953 is cautiously worded was explained by Justice Ram Labhaya in one case.[12] Referring to the Regulation of 1952 [The Assam Autonomous Districts (Administration of Justice) Regulation, 1952] (Regulation 3 of 1952), he made the following observations. [The reasoning will apply to the repeal of the Rules of 1937 also]:—

> It is true that the repeal of the Regulation (by Rule 58 of the Khasi and Jaintia Rules, 1953) was limited to matters dealt with by the rules of the District Council. But this was necessary because the Regulation had to remain in force in regard to other Hill Districts of Part A of the table annexed to para 20 until District Councils were constituted there. The Regulation could be repealed by the District Council of the United Khasi-Jaintia Hills only to the extent that it applied to its territory.

Incidentally, it may be mentioned that the Rules of 1937 have been referred to also in the Adaptation of Laws Orders that were issued in 1970 and 1973, consequential on the constitutional developments that took place in connection with the formation of the State of Meghalaya which became first an "autonomous" state within the State of Assam and then emerged as a totally separate state with full statehood. In regard to the powers of the Deputy Commissioner and his Assistants in tribal areas, the Rules of 1937 still seem to furnish the requisite material, and therefore that part of the Rules appears to be useful even today. These are matters about which the Rules of 1953 are silent, and may be taken as not effectively repealed by the Rules of 1953. The gist of the relevant provisions of the Rules of 1937 will be summarised later, in a convenient form.[13]

In 1950, there was issued the Khasi Siemships (Administration of Justice) Order, 1950, dated the January 25, 1950. The Order dealt with some of the judicial functions to be exercised by the Khasi *siems* (including, as was later pointed out judicially, other village authorities). The Order will be better appreciated if a bit of the relevant history is borne in mind. During the early British period, the *siems* (local chiefs) had certain

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10. Section 6, Scheduled Districts Act, 1874.
11. Rule 58.
12. *Supra* note 5.
13. Appendix 1.

judicial functions which they exercised with the help of their *myntries* in the Khasi States.

In due course, they came under the control of officers of Government. The functions exercised by these chiefs (and analogous village authorities) were allowed to be continued by the British. Incidental references to them are to be found in statutory Instruments of those days. The Order of 1950 referred to above seems to be the first formal attempt to present a comparatively elaborate set of provisions regulating the judicial functions and procedure of these chiefs. It has been specifically held[14] that after the passing of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, the jurisdiction of the *siems* and their *durbar* did not survive, except in so far as the *siems* were given jurisdiction by those very Rules. (The actual decision related to Shillong, but the reasoning is much wider in its application and is valid in regard to the tribal areas also). In other words, the judicial powers of the *siem* and his *durbar* must now be derived only from the 1953 Rules (which envisage them as component elements of the Village Courts constituted thereunder) and not *dehors* those Rules. In fact, if one carefully goes through the provisions of the 1953 Rules as to Village Courts, one finds that to regard the Order of 1950 as still governing the judicial powers of *siems* would create considerable confusion, because, under the 1953 Rules, *siems* form part of the Village Courts. Their judicial status cannot be derived both from the Order of 1950 and from the Rules of 1953—particulary when there is a lot of overlapping between the two Instruments. Thus, for the purposes of ascertaining the "living law" in the areas in question at the present day on the subject of judicial powers of *siems*, one should keep aside the Khasi Siemships (Administration of Justice) Order, 1950 issued on the 25th January 1950 and have regard only to the Rules of 1953.

This somewhat elaborate discussion was unavoidable, since the true position often fails to be appreciated if sufficient attention is not paid to the aspects discussed above. Gist of the Order of 1950 is summarised in a convenient form[15] as a matter of historical interest.

(iv) The fourth period begins with the year 1953. In 1953, as contemplated by paragraph 4 (4) of the Sixth Schedule to the Constitution, the Garo Hills Autonomous District Council framed the Garo Hills Autonomous District (Administration of Justice) Rules, 1953,[16] and similarly the United Khasi-Jaintia Hills Autonomous District Council also framed the United Khasi-Jaintia Autonomous District (Administration of Justice) Rules, 1953.[17] Both these Rules contain provisions for the

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14. *Supra* note 5.
15. Appendix 2.
16. Briefly, the Garo Hills Rules, 1953.
17. Briefly, the Khasi and Jaintia Hills Rules, 1953.

constitution of Village Councils, District Council Courts, Subordinate District Council Courts and Village Courts and their powers and jurisdiction to try suits and cases.

Upto 1969, the areas in question formed part of the State of Assam. In 1969, an autonomous State of Meghalaya was formed within the State of Assam, comprising the Garo Hills and the United Khasi-Jaintia Hills districts as provided by section 3 (1) of the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969). In pursuance of section 66 (2) of that Act, the Rules of 1937 and 1953 were adapted by the Meghalaya Adaptation of Laws Order (No. 1), 1970.

In 1972, further constitutional changes took place in the North-Eastern Region. By section 5 of the North-Eastern Areas (Reorganisation) Act, 1971, the 'autonomous' State of Meghalaya was constituted into a full-fledged state. The Rules referred to above were again adapted by the Meghalaya Adaptation of Laws Order (No. 1) of 1973, issued under section 79 of that Act.

As to the High Court, in 1954 the Government of Assam, acting under paragraph 4 (3) of the Sixth Schedule to the Constitution, issued the Assam High Court (Jurisdiction over District Council Courts) Order, 1954.[18] The Order is material for ascertaining the position as to the appellate and revisional jurisdiction of the High Court of Gauhati, both as regards the Garo Hills District and as regards the Khasi and Jaintia Hills District. The Order is still in force.

Three major sets of Instruments applicable to Khasi and Jaintia Hills

To re-capitulate, there are at least three major sets of statutory Instruments relevant to the judicial administration of Khasi and Jaintia Hills District, which are as under:—

(a) Rules for the Administration of Justice and Police in the Khasi-Jaintia Hills, 1937, issued on the 29th March, 1937—to the extent to which some portions of these Rules still survive. [What portions survive is a matter of considerable obscurity].[19]
(b) The United Khasi-Jaintia Hills (Autonomous Districts) (Administration of Justice) Rules, 1953, issued on the 24th March, 1953.
(c) The Assam High Court Order, 1954, relating to the jurisdiction of the High Court of Assam, in regard to District Council Courts in the tribal area in question.

There has also been enacted (by the District Council) certain legislation dealing with various customary offices for the Khasi-Jaintia Hills

18. Briefly, the Assam High Court Order, 1954.
19. See chapter 5, *infra*.

District, but this legislation is mainly concerned with appointment and election to the offices in question and does not appear to have direct relevance to the structure and functioning of the judiciary.

Three major sets of Instruments applicable to Garo Hills

Similarly in the Garo Hills, we have now at least three major sets of statutory Instruments, namely,—

(a) Rules issued in 1937—to the extent to which these Rules survive. [This is a matter of considerable obscurity].[20]
(b) Rules for the Administration of Justice in the Garo Hills District, 1953, issued on the 18th December, 1953.
(c) The Assam High Court Order, 1954, dealing with the jurisdiction of the High Court in relation to various District Council Courts in the tribal area in question.

It may also be mentioned that the Garo Hills District Council has enacted, *inter alia*, the Garo Hills (Social Customs and Usages) Validating Act, 1958. The Act does not deal with the structure of courts in the area in question, but still it is of some interest in connection with the law to be recognised or applied by the courts, since, in effect, it confers the status of law on social customs and practices that are "universally prevalent amongst the Garo Hills people".

The law applicable

Finally, it may be mentioned that as to the law applicable to the tribal areas, there are provisions of special interest to be discussed in a later chapter.[21]

Judicial decisions from the areas in question have clarified a number of points relevant to the legal system in regard to these areas, and many of them have been, or will be, referred to in this study while dealing with various topics. A pretty large number of the decisions—many of them unreported—lay down important points of personal law. At this place, it would be convenient to mention a few of them which, while dealing with miscellaneous matters, illustrate the general approach of the judiciary. Some of these decisions show considerable legal learning[22] and furnish interesting historical material. Some of them deal with the legislative power exercisable by the various authorities concerned with these areas, and clarify their status—in particular, the status of the District

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20. *Ibid.*
21. See chapter 8, *infra.*
22. *U Owing* v. *Ka Nosibon*, A. I. R. 1956 Assam 129. (Civil jurisdiction of *siems*—history traced); *District Council, United K. & J. Hills* v. *Miss Silimon*, A. I. R. 1972. S. C. 787 (History of protection to tribals traced).

Councils.[23] Some deal with territorial divisions and their limits.[24] A few of the judicial decisions concern themselves with administrative matters, such as the power of the *Lyngdoh* (village chief) and his *durbar* (council) to increase license fees.[25] A few others relate to procedural matters or matters concerning judicial business—such as the transfer of cases.[26] Incidentally, in the context of procedural matters, it may also be added that the law applicable to these areas envisages that the courts will not be bound by the letter of the procedural codes, but will be guided by the "spirit" of the codes. This approach was reflected, *inter alia*, in a decision of the High Court rendered long ago,[27] where the transfer of an execution case was ordered, following the "spirit" of the Code of Civil Procedure.

Some of the decisions deal with the application of specific Central Acts. For example, it has been held that the Court Fees Act and the Suits Valuation Act do not apply to the United Khasi and Jaintia Hills district, as regards courts created by District Councils.[28]

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23. See chapter 2, *supra*.
24. *District Council, United K. & J. Hills* v. *Ka Drapsilla*, A.I.R. 1975 S. C. 102. (Mawkhar village, whether part of the Shillong municipality); *Edwingson* v. *State of Assam*, A.I.R. 1966 S. C. 1220.
25. *Ka Dellisbon* v. *Durbar of Lyngdoh of Mawphlong Lyngdohship*, A.I.R. 1958 Assam 33.
26. *Forching Rava* v. *The State*, A.I.R. 1952 Assam 3. (Rules under the Extra Provincial Jurisdiction Act, 1947—Transfer of case denied); *Sukriti Bala* v. *Hemanta Kumar Nag Chowdhri*, A.I.R. 1957 Assam 152. (Transfer of execution case ordered).
27. *Sukriti Bala* v. *Hemanta Kumar Nag Chowdhri*, A. I. R. 1957 Assam 152.
28. *U Shondro* v. *Ka Phiwer*, A.I.R. 1971 A. & N. 89.